A.F.R.

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, C.J.

WRIT PETITION NO.2485 OF 2004

PETITIONER		Widow Neera bai, wife of Rathan Bhoiya, Occupation : House wife, Resident of Vill : Beladula, Distt : Raigarh, C.G.
	Versus	
RESPONDENTS	1.	Sri Kishan Agarwal, son of Angna Ram Agarwal.
	2.	Shri Rajesh Kumar, Son of Shri Kishan Agarwal.
	3.	Shri Vishnu Agarwal, Son of Shri Kishan Agarwal.
	4.	Shri Vijay Kumar Agarwal, Son of Shri Kishan Agarwal.
		Above all resident of Gourishankar Temple Road, Raigarh, Distt – Raigarh – C.G.
	5.	Shri Mitra Bhanu, Son of Harimali.
	6.	Shankar, son of Ghasiya Mali.
	7.	Shri Budhu S/o Dev Charan Sora.
	8.	Thrinathu, Son of Ghasiya Mali.
		Respondent No.5 to 8 resident of village : Vijaypur, Tahsil & Distt : Raigarh (C.G.)
	9.	Shamadevi, wife of Narendra Ram Tiger, Resident of village : Atarmuda, Distt : Raigarh.
	10.	Firthu Singh, Son of Lati Ram Gond, resident of Village : Vijaypur, Tahsil & Distt : Raigarh.
	11.	Sub-Divisional Officer, Raigarh.
	12.	Collector, Raigarh.
	13.	Board of Revenue, Bilaspur (C.G.)

Present : Shri Abhay Tiwari, learned counsel for the petitioner.
Shri Sanjay S. Agrawal, learned Government Advocate for the State/respondents No.11, 12 and 13.

ORAL ORDER
(Passed on 8th February, 2006)

The petitioner Neerabai is the wife of Late Rathan Bhoiya. She made an application before the Sub-Divisional Officer, Raigarh claiming that she belongs to Scheduled Tribe called Bharia-Bhumia, which Tribe is notified as a Scheduled Tribe by the President of India. She alleged that respondents No.1 to 4 purchased her ancestral agricultural land bearing Khasra Nos.13, 25/1 & 25/2 situate in Vijaypur Village, totally ad-measuring 1.119 hectares in the name of respondents No.6 to 9 without payment and, therefore, the Sub-Divisional Officer, Raigarh should take action under Section 170-B of the C.G. Land Revenue Code, 1959 (for short 'the Code'). Admittedly, the petitioner belongs to a caste-group called "Bhoiya". We do not find the word 'Bhoiya' in the Schedule of Tribes in the Presidential Order. However, it is the case of the petitioner that, though the tribe to which she belongs is called 'Bhoiya', she also belongs to Bharia-Bhumia Tribe notified in the Schedule to the Presidential Order. In other words, according to the petitioner, the same tribe is known by name 'Bhoiya' as well as 'Bharia-Bhumia'. The Sub-Divisional Officer, Raigarh did not accept the above case of the petitioner and, therefore, refused to take action under Section 170-B of the Code. The petitioner, being aggrieved by the order of the Sub-Divisional Officer, Raigarh, preferred an appeal to the Collector, Raigarh District under Section 44 of the Code. The Collector, Raigarh, having opined that the tribe 'Bharia-Bhumia' is also known by the name 'Bhoiya', has held that alienation made by the petitioner in favour of the respondents without payment was illegal and accordingly, by his order, directed restoration of possession of the subject land in favour of the petitioner. The purchasers of the subject land, being aggrieved by the above order of the Collector of the Raigarh District, preferred a revision to the Board of Revenue under

Section 50 of the Code. The Board of Revenue, having opined that the Collector has no jurisdiction to equate 'Bhoiya' tribe with 'Bharia-Bhumia' tribe, set aside the order of the Collector, Raigarh District and confirmed the order of the Sub-Divisional Officer, Raigarh by the impugned order. The petitioner, being aggrieved by the above order of the Board of Revenue, has preferred this writ petition.

(2) I have heard learned counsel for the parties. It was contended by learned counsel for the petitioner that since the same Tribe is known by the name 'Bharia-Bhumia' as well as 'Bhoiya', the Collector, Raigarh District had rightly annulled the sale-transaction entered into between the petitioner and respondents and directed restoration of the subject land to the petitioner and, therefore, the Board of Revenue ought not to have interfered with the order of the Collector, Raigarh District. Learned Government Advocate for the State, *per contra*, would support the order of the Board of Revenue.

(3) Having heard learned counsel for the parties, I do not find any merit in the writ petition. It is well settled that the State Authorities, either directly or indirectly, cannot include a caste or tribe in the Schedule to the Presidential Order. Which caste or tribe should be included in the Schedule of Scheduled Castes or Scheduled Tribes, is the exclusive domain and power of the Parliament. The State Authorities have absolutely no role to play. In a given case, if they think that certain caste or tribe entitled to be included in the Schedule of the Scheduled Castes or Scheduled Tribes is left out, they may send a recommendation to the Government of India to be placed before the Parliament for inclusion. The Collector, Raigarh District, in considering the petitioner as the person

belonging to 'Bharia-Bhumia Tribe', has exceeded his jurisdiction. In that view of the matter, no exception could be taken to the order made by the Board of Revenue. In the result, the writ petition is dismissed, however, with no order as to costs.

Sd/-

CHIEF JUSTICE

G.Singh